

IN THE
UNITED STATES DEPARTMENT OF INTERIOR
OFFICE OF HEARINGS AND APPEALS
TRANSCRIPT OF PROCEEDINGS

OMAR STRATMAN,

Protestant,

v.

LEISNOI, INC.,

KONIAG, INC.,
BUREAU OF INDIAN AFFAIRS,

Intervenors.

HEARING

BEFORE

HONORABLE HARVEY C. SWEITZER
United States Administrative Law Judge

August 13, 1998
Anchorage, Alaska USA
Day 9

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STRATMAN v. LEISNOI, INC. 3012

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1 week to go through all of Leisnoi's property with the
2 intent of trying to develop, to see what the economic
3 use could be made for Mr. Stratman. It's not a
4 private marital communication.

5 THE COURT: Well, assuming he did
6 everything you say, assuming she will say he did
7 everything you say, insofar as anything I have to
8 determine, so what?

9 MR. FITZGERALD: It goes to his lack of
10 standing, Your Honor. I know you're not going to
11 decide the issue. That will be decided by the IBLA.

12 But I believe your role here is to
13 gather the facts so that we have it in the Record.
14 And some day we all know we're going to be back in
15 U.S. District Court, and Mr. Schneider will then
16 again file some sort of Motion claiming his client is
17 a public-interest litigant.

18 We want to have the facts established.
19 That's his interest, is to obtain this land for
20 himself. And he's not a public-service litigant, and
21 there's no basis for him to post a bond, as he has
22 previously sought to do.

23 THE COURT: Do you want to say anything
24 more about it, Mr. Schneider?

25 MR. SCHNEIDER: These issues only arose

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1 in the injunction context. They're only relevant in
2 the injunction context.

3 It's got nothing to do with him
4 standing in front of the Federal District Court, and
5 nothing to do with standing in front of this Court.
6 Mr. Fitzgerald knows it.

7 It is interesting that he wishes this
8 Witness to rebut testimony that I hope Your Honor
9 recalls he affirmatively put on. I mean, when, since
10 when do you call a rebuttal witness to rebut the
11 testimony that you put on, somebody that's not on the
12 list?

13 MR. FITZGERALD: Hostile witness I
14 called, Your Honor.

15 THE COURT: Sir, witnesses?

16 MR. FITZGERALD: I say, it was a
17 hostile witness that I called. And I'm going to
18 improve his testimony.

19 I think the time we spend arguing this,
20 we could just get the Witness on and off and preserve
21 it for a Record, and at a later time the IBLA can
22 decide whether this is proper testimony.

23 THE COURT: Well, time is only one of
24 our considerations.

25 With some misgiving, and you've already

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1 stated you understand that it has nothing to do with
2 the determination, or recommended determination I'm
3 called on to make, I'll permit you to call the
4 Witness over the objection of Mr. Schneider.

5 MR. FITZGERALD: Thank you. And I will
6 try to be brief, Your Honor.

7 MR. SCHNEIDER: In that event, Your
8 Honor, we would like to reserve a little bit of time
9 to call Mr. Stratman if need be at the end of the
10 hearing to address the comments today.

11 THE COURT: You may certainly have
12 that, sir.

13 MR. SCHNEIDER: Thank you.

14 MR. FITZGERALD: Call Meldonna Cody to
15 the stand.

16 THE COURT: Raise your right hand,
17 please.

18 M E L D O N N A V I R G I N I A C O D Y, called
19 as a witness by the Respondent, having
20 been first duly sworn, was examined and
21 testified as follows:)

22 THE COURT: Okay. And understand --
23 Sit down, please, ma'am.

24 Understand that while I said time
25 certainly isn't, clearly is not our only

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1 consideration, you did suggest a limited time. So,
2 I --

3 MR. FITZGERALD: I did, and I intend to
4 be brief, Your Honor.

5 THE COURT: So I understand you, you to
6 be there in good faith on that.

7 MR. FITZGERALD: I certainly am in good
8 faith on that representation.

9 (Whereupon, remarks were made between
10 the Reporter and the Witness, off the Record, after
11 which the following occurred:)

12 THE WITNESS: Meldonna Virginia Cody,
13 M-e-l-d- o-n-n-a; my middle name, Virginia, V-i-r-g-
14 i-n-i-a; last name, Cody, C-o-d-y.

15 DIRECT EXAMINATION

16 BY MR. FITZGERALD:

17 Q. Thank you. And were you married to Mr.
18 Omar Stratman?

19 A. Yeah, I was.

20 Q. When did you marry him?

21 A. October of '84.

22 Q. And when did you get divorced?

23 A. November of '93.

24 Q. Do you have any personal knowledge as
25 to the motivation of Omar Stratman in pursuing this

litigation?

A. Yes.

Q. Please explain it to the Judge.

A. It's for his benefit, for financial benefit.

Q. And what, what facts do you base that statement on?

A. On the incident that we talked about, the, when I was running ty-, --

THE COURT: Well, let me say, you say, "That we've talked about." I think you're talking about what Mr. Fitzgerald represented. Understand, he's not testifying.

THE WITNESS: Okay.

MR. FITZGERALD: My statement is not in evidence.

THE COURT: You now are, so all that would be considered by anybody would be what you have to say, ma'am, so far as evidence is concerned.

THE WITNESS: I understand.

THE COURT: Okay.

THE WITNESS: All right. When I was managing the lodge we had a group of, of real estate consultants -- I'm not certain if that's the accurate term to describe them, but I believe that's what they

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Cody - Direct

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were. -- and it was a husband and wife and another man came to the lodge and spent a good week exploring different areas of the, the land, and kept coming back in the evenings with descriptions of potential revenue-making ventures on parts of that land.

Q. And who owns that land that you're referring to?

A. Right now?

Q. Yes.

A. I suppose Leisnoi owns it right now.

Q. Okay, and this, this land that you're referring to that they were exploring the possibility of developing, where is that located?

A. From the, what we called the "ranch headquarters," the 160 acres up into Chiniak.

Q. And they, they didn't -- Let me ask you whether your husband ever made any statements, and if so, what they were, pertaining to the future of that land, Leisnoi's land?

A. Oh, I have to go on, on Record as saying I don't know whether that's Leisnoi's land or was at the time. The, the -- I was even involved in some of it.

We were excited about potentially -- One thing I thought was sort of bizarre was making a

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ski slope. And I asked about how Omar planned to do that, and he was going to buy a snow-making machine and develop a ski slope kind of behind, well, on a plat, it would be behind the lodge area.

And there was a spit of land that goes out beyond Mr. Lucas' land in Chiniak, and we were looking at doing some kind of a charter, a boat charter outfit from that area.

Q. Did your husband ever make any indications as to whether he hoped that one day Leisnoi's land would become his own?

A. Yes.

Q. And you, how did he, how did he manifest that intent?

A. There, there were several conversations, but in particular when we picked up these real estate people from the airport, before you get to Kalsin Bay Hill, as you're heading towards the ranch, there's one point where the road has a, a sweeping vista of, of the ranch and the whole point out towards Chiniak. And as you look across the bay there he stopped the, the car and gestured.

He actually made a point of stopping the car and saying, "This is the land that we're talking about."

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Cody - Direct

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Q. What specifically did he say about the, "Land we're talking about," with respect to the future of it or the future ownership thereof?

A. I can't tell you the specific quote. The implication was that this was going to be his land, and that this is what the real estate people were there to develop.

Q. And what reaction, if any, did you have when you read a letter to the Editor that your ex-husband later wrote purporting to try to save Leisnoi's land for green space or, or for public use?

A. I laughed.

Q. Why? Why?

A. That's, that, that's unlike Omar. And he's not one to just donate things to somebody, anybody, so it just didn't fit his character.

Q. And so in essence what do you believe to be his motivation in pursuing this case?

MR. SCHNEIDER: Asked and answered.

MR. FITZGERALD: Just the last question, Your Honor, just to sum it up.

THE COURT: All right. I'll, I'll, I'll permit just this one question.

THE WITNESS: In pursuing the case I think he's got, at one point he thought that he had

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1 that land, and I think he had great disappointment
2 when he didn't have it. And I think that it's, it's
3 plagued him that he hasn't obtained that land.

4 MR. FITZGERALD: Thank you. No further
5 questions.

6 THE COURT: Cross-examine, Mr.
7 Schneider.

8 MR. SCHNEIDER: Thank you, Your Honor.

9 CROSS EXAMINATION

10 BY MR. SCHNEIDER:

11 Q. Ms. Cody, you were married to Mr.
12 Stratman in October of '84?

13 A. Yes.

14 Q. Be sure and answer audibly.

15 A. Yes, I was.

16 Q. And you were aware of -- When you got
17 to know Omar and got involved with him, and
18 ultimately married him, were you aware that he had
19 made, that he had settled a decertification case with
20 Leisnoi?

21 MR. FITZGERALD: Objection, Your Honor.
22 Misstates the evidence.

23 MR. SCHNEIDER: Yeah, sure does. With
24 Koniag. Let me try it again. Let me just try it
25 again. Stick with me here.

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1 THE COURT: Okay, that's stricken.

2 BY MR. SCHNEIDER (Resuming):

3 Q. When you married Omar you knew that he
4 had been fighting over Leisnoi's eligibility in the
5 past; fair to say?

6 A. What I knew when I got married to Omar,
7 I can relate it to an incident when we had dinner
8 after we got married.

9 Q. Okay, could you just tell me, did you
10 know that he had been in --

11 A. Very little. Very little.

12 Q. All right. But you knew something
13 about an ongoing dispute?

14 A. Yes, I did.

15 Q. Fair enough. Okay. There was an
16 ongoing dispute. Did you understand that there had
17 been a settlement of that dispute?

18 A. Not -- No. I have to say at the time
19 that I got married, no.

20 Q. Okay, then after you got married did
21 you come to know that?

22 A. Yes.

23 Q. Okay.

24 A. I did.

25 Q. And the settlement of this dispute, did

1 you come to find out that it had been participated in
2 by the United States Government?

3 A. I, I understood that it went to the
4 Supreme Court and halted just before it went to the
5 Supreme Court.

6 Q. Okay, that's, that's correct. But did
7 you understand that the, that the Bureau of Indian
8 Affairs, the, the very party in this proceeding, was
9 a party to that settlement and to that earlier
10 dispute?

11 A. No.

12 Q. Okay.

13 A. No.

14 Q. Fair enough. Did you understand that
15 that earlier fight, problem, litigation, had been
16 brought by a citizen's action group, and that Omar
17 was one of its members?

18 A. Not at the time when I first knew Omar,
19 no, I did not know that.

20 Q. Okay, did you later come to find that
21 out?

22 A. Yes.

23 Q. Okay. And that there were a whole list
24 of people that were members of the, the Citizen's
25 Action Group at one point and named on the caption of

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Cody - Cross

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1 the pleadings, Diefers (phonetic) and a bunch of
2 other folks?

3 A. I think I only saw them as "et al." I
4 don't believe -- I never saw the names.

5 Q. Okay, but you knew at one point in
6 history that was not just Mr. Stratman's fight, but a
7 fight by a citizen's acting group centered in Kodiak?

8 A. I didn't know that until much later in
9 my marriage.

10 Q. That's fine, but the question is: Did
11 you ever know it?

12 A. Yes.

13 Q. Thank you very much. Now let's just
14 get to your relationship with Mr. Stratman since your
15 divorce.

16 Not too rosy. Fair enough to say?

17 A. No, not too rosy.

18 Q. Not very rosy at all. You and he have
19 meet each other at the Courthouse?

20 A. Yes.

21 Q. Okay, now let's get to the agreement
22 that you've come to know it over time. This
23 agreement for land couldn't go anywhere until Leisnoi
24 got its land; was that your understanding?

25 A. Yes.